

October 28, 2008

MEMORANDUM OF UNDERSTANDING BETWEEN THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION, AND THE TAHOE REGIONAL PLANNING AGENCY
for
VEGETATION MANAGEMENT

Note: Additions to the original (August 2008) draft of this document are shown in underlined text; deletions are shown in ~~striketrough~~ text.

INTRODUCTION

This Memorandum of Understanding (MOU) describes the roles and relationships between the Tahoe Regional Planning Agency (TRPA) and the California Regional Water Quality Control Board, Lahontan Region (Water Board) in regulating vegetation management activities in the area of the Lake Tahoe Basin under mutual jurisdiction of both agencies. The Water Board intends to adopt a waiver that will exempt project proponents in the Lake Tahoe Basin from the need to apply for or receive timber harvest or vegetation management permits from the Water Board when such projects are regulated by the TRPA under this MOU.

The waiver is a separate document that provides the basis and conditions for the Water Board's reliance on the TRPA for permitting and review of vegetation management activities. Project proponents should review the waiver, titled *Waiver of Filing a Report of Waste Discharge and Waiver of Waste Discharge Requirements for Vegetation Management Activities Regulated by the Tahoe Regional Planning Agency*, available at <http://www.waterboards.ca.gov/lahontan/>.

The MOU and waiver apply to the California portion of the Lake Tahoe Basin under mutual jurisdiction of the Water Board and the TRPA. The Lake Tahoe Basin includes lands in El Dorado and Placer Counties, California, which are tributary to Lake Tahoe. The California portion under the jurisdiction of both the TRPA and the Water Board does not include the Alpine County portion of the Lake Tahoe watershed, but does include part of the Truckee River Hydrologic Unit, between the Lake Tahoe outlet dam and the Bear Creek confluence.

FINDINGS

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Water Board), through direction to the Water Board Executive Officer, and the Tahoe Regional Planning Agency (TRPA) Governing Body, through direction to the TRPA Executive Director, have agreed to enter into this Vegetation Management Memorandum of Understanding (MOU); and

WHEREAS, California Governor Arnold Schwarzenegger issued a Proclamation strongly encouraging the Water Board and the TRPA to take expedited action to implement the recommendations of the California-Nevada Tahoe Basin Fire Commission; and

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WHEREAS, the California-Nevada Tahoe Basin Fire Commission Report of May 2008 recommended the Governor of the State of California direct, within the framework of his legal authority, the Water Board to transfer to TRPA no later than October 1, 2008, by a suitable MOU, all ~~permitting~~ responsibility of the Water Board relating to fuel reduction projects performed within the Lake Tahoe Basin. The intent is to have an expedited single permitting process, eliminating the need for the Water Board to issue a second permit, and to achieve consistency in the application of environmental laws ~~relating as it relates~~ to these kinds of projects in the Lake Tahoe Basin; and

WHEREAS, Lake Tahoe is a designated Outstanding National Resource Water whose quality and beneficial uses are threatened by sediment, nutrient, and other pollutant loading from a variety of sources. Control of these sources is of major interest to the States of California and Nevada and the federal government; and

WHEREAS, the Water Board is an agency of the State of California, empowered by the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, and other federal and state laws to set water quality standards and to regulate activities in the California portion of the Lake Tahoe Basin which may have an adverse effect on water quality; and

WHEREAS, TRPA is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Govt. Code section 66801 et seq.; NRS 277.200 et seq.) to regulate activities within the Lake Tahoe Region, which may have a substantial effect on natural resources of the Region. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards for water quality, air quality, noise, recreation, soil conservation, wildlife habitat, vegetation preservation, scenic quality, and fisheries. The Compact also directs TRPA to define which activities are exempt from TRPA review and approval. TRPA defines exempt activities in Chapter 4 of its Code of Ordinances; and

WHEREAS, the Water Board and TRPA are both responsible for implementing the bi-state Water Quality Management Plan for the Lake Tahoe Region ("208 Plan") and TRPA is recognized as one of the implementing agencies for certain California Water Quality Control Plan provisions applicable to the Lake Tahoe Basin. These provisions require compliance with water quality standards and the installation of BMPs for the control of erosion and stormwater on all improved properties in the California portion of the Lake Tahoe Basin, and prohibit disturbance of Stream Environment Zones (SEZs), with limited exceptions; and

WHEREAS, the Water Board and TRPA are interested in developing a streamlined, cooperative approach toward regulating vegetation management activities in the Lake Tahoe Basin; and

WHEREAS, the Water Board and TRPA recognize that areas of overlapping authority and regulatory effort exist in the operations of the two agencies, and that it

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will be mutually beneficial to the Water Board, TRPA, and the regulated community to avoid unnecessary duplicative regulation, and

WHEREAS, "vegetation management activities" include all activities related to the management of vegetation for the purposes of fuel reduction; forest thinning; ~~establishment of shaded fuel break~~; and/or environmental improvement (such as forest enhancement, riparian enhancement, and aspen stand enhancement); cutting or removal of trees and vegetation, together with all the work incidental thereto, including, but not limited to, construction, reconstruction, maintenance, and decommissioning of roads, fuel breaks, stream crossings, landings, skid trails, or beds for the falling of trees; burned area rehabilitation, ~~fuels hazard reduction~~, hazard tree removal; site preparation that involves disturbance of soil, burning of vegetation, or herbicide/pesticide application. Vegetation management activities do not include aquatic vegetation management, preparatory tree marking, surveying, or road flagging; and

WHEREAS, the Water Board finds that this MOU provides assurance that vegetation management activities conducted in the California portion of the Lake Tahoe Basin will be permitted by the TRPA in a manner that is protective of water quality such that separate permitting by the Water Board will not be necessary. Therefore, this MOU provides the basis for the Water Board to adopt a waiver of the need to file a report of waste discharge and/or receive waste discharge requirements for discharges associated with vegetation management activities regulated by TRPA.

AGREEMENTS

NOW THEREFORE, the Water Board and TRPA agree as follows:

Review and Permitting

1. TRPA will have responsibility for reviewing vegetation management activity proposals, issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. This includes exempt and qualified exempt activities, as defined in the TRPA Code of Ordinances.
2. TRPA, as the agency responsible for project review and permitting, may request that the Water Board assume responsibility for permitting specific projects or provide assistance to TRPA for any actions described in Section Paragraph No. 1 above due to staff resource limitations, project complexity or other similar situations. The primary goal of any transfer of responsibility is to ensure timely permitting of projects.
3. ~~An applicant proposing a vegetation management activity may choose to submit a complete application only to the Water Board and not to TRPA. In this situation, the Water Board will be the permitting agency and may request assistance from the TRPA.~~

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4. ~~The Water Board will not normally issue a permit, but may be involved in consultation and coordination with TRPA staff.~~
5. ~~The Water Board may also use its full regulatory authority when requested by TRPA or as necessary to ensure protection of water quality (see Paragraphs No. 2 and No. 13).~~
- 3.6. The agency issuing a permit for the vegetation management activity, whether TRPA or the Water Board, will be solely responsible for approval of exemptions to prohibitions related to SEZ disturbance. Granting of such exemptions will not be delegated to an agency not a party to this MOU. Exemptions shall be considered in accordance with the TRPA Code of Ordinances or the Water Quality Control Plan for the Lahontan Region (Basin Plan), depending on the agency issuing the permit.
- 4.7. The agency issuing a permit to conduct vegetation management activities will conduct any required pre-harvest project and final inspections, and will be responsible for granting a variance to the October 15 – May 1 soil disturbance prohibition period, if applicable.
8. ~~If a public agency, as defined in the California Environmental Quality Act, prepares an environmental impact report for a proposed vegetation management activity and it identifies water quality impacts that are not avoided, substantially lessened, and/or mitigated to a level of insignificance, the Water Board may use its authority to issue a permit for the project. Similarly, if a National Environmental Policy Act document prepared for a project includes specific considerations that make it infeasible to mitigate water quality impacts to a less than significant level, the Water Board may use its authority to issue a permit for the project.~~
5. This MOU does not cover vegetation management projects with impacts that cannot be mitigated to less than significant levels. Such impacts are those identified in a California Environmental Quality Act environmental impact report, or a National Environmental Policy Act or TRPA environmental impact statement. If another regulatory agency imposes conditions or requirements such that the impacts are mitigated to less than significant levels, then the project may proceed under the provisions of this MOU.

Notification and Coordination

- 6.9. Consistent with the provisions of Paragraph No. 2 above, ~~the lead permitting agency, in most cases TRPA, will notify and may consult the other agency, typically the Water Board, during the application review period for proposed vegetation management activities that includes~~ propose any one or more of the following items:
 - a) Permanent crossings bridging a perennial reach of a watercourse.

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- b) Temporary "wet" crossings (vehicles crossing through a channel when water is present).
- c) Herbicide/pesticide use, excluding use of Borax/Sporax.
- d) New permanent road construction over 3,000 linear feet, temporary road construction that will not be decommissioned prior to October 15 of each year.
- e) Treatment areas of more than five hundred (500) total acres or one hundred (100) acres of verified stream environment zone lands.
- f) Equipment operations on slopes over 30 percent.

Such consultation may include, but not be limited to, technology sharing, and discussion of Best Management Practices and appropriate control and mitigation measures as represented through the permit conditions. Consultation activities will occur in a manner that does not alter the normal permitting time that the lead permitting agency is committed to follow and lack of timely response by the other agency will not delay project permitting.

7.10. TRPA and the Water Board shall notify each other within five (5) business days of confirming that any person or entity has violated the terms of any permit or project authorization or violated other applicable rules governing vegetation management activities, as covered in the TRPA Code of Ordinances or in the Water Board's Basin Plan.

8.11 By February 1 of each year, each agency must submit to the other agency a list of all vegetation management activities which that agency authorized to proceed under this MOU during the preceding calendar year (January thru December), and provide, as appropriate, activity details including, but not limited to: project proponent, project location, and any compliance issues associated with the project. The list of projects maintained by the Tahoe Fire and Fuels Team can be used to satisfy this provision. TRPA and Lahontan will meet at least semi-annually to review, at a programmatic level, activities and actions taken pursuant to this MOU.

Dispute Resolution Procedures

9.12 Any dispute between TRPA and the Water Board over the interpretation or implementation of this MOU, including but not limited to implementation of the actions covered by this MOU, shall be resolved expeditiously and at the lowest staff level possible. However, if a dispute cannot be resolved by the Water Board executive officer and the TRPA executive director, each agency is free to proceed with actions it believes are appropriate and legal.

General Provisions

10.13. Nothing in this MOU shall be construed to limit the authority of either the Water Board or TRPA to ensure compliance with its environmental standards and regulations or to take enforcement action.

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- ~~11.14.~~ This MOU is strictly between TRPA and the Water Board for the mutual jurisdictional area in the state of California and cannot be superseded by a different MOU or other agreement with a different person or entity.
- ~~12.15.~~ Staff of the Water Board and TRPA staff shall cooperatively provide training, technical review, and comments to each other, as appropriate, and shall discuss, on at least a semi-annual basis, any issues, problems, and opportunities encountered during administration and implementation of this MOU.
- ~~13.16.~~ Two staff persons from each agency shall be designated as a liaison and responsible person for the implementation of this MOU. A staff person and an alternate from each agency shall be designated as the liaison for the implementation of this MOU. Each agency must dedicate staff to adequately implement the provisions of this MOU.
- ~~14.17.~~ This MOU takes effect upon the signature of the Water Board executive officer and the TRPA executive director and remains in effect until terminated. This MOU may be amended upon written request of either the TRPA or Water Board and the subsequent written concurrence of the other. Either the TRPA or Water Board may terminate this MOU with a 60-day written notice to the other. Both TRPA and the Water Board hereby agree to cooperate in good faith to carry out the provisions of this MOU to achieve the objectives set forth herein.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION

Dated: _____
Harold J. Singer
Executive Officer

TAHOE REGIONAL PLANNING AGENCY

Dated: _____
John Singlaub
Executive Director